

BY FAX

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

48
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PSG

CV11-03268

11 Case No.

12 DEFENDANT STARBUCKS
13 CORPORATION'S NOTICE OF
14 REMOVAL PURSUANT TO 28 U.S.C. §§
15 1332(D)(2), 1441(A), 1446, 1453

16 (DIVERSITY)

17 [Declarations of Jana Rutt and Jeremy F.
18 Bollinger; Civil Cover Sheet; Certification of
19 Interested Entities or Persons; and Notice of
20 Related Cases filed concurrently]

21 (Santa Clara County Superior Court Case No.
22 111CV201544)

23 BRITTNEY COOPER, an individual, on
24 behalf of herself and all persons similarly
25 situated,

26 Plaintiff,

27 v.

28 STARBUCKS CORPORATION, a
Washington Corporation; and DOES 1
through 50, inclusive,

Defendant.

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
2 DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant Starbucks Corporation ("Starbucks") hereby removes
4 to this Court the state court action described below, pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446,
5 and 1453. In support thereof, Starbucks states as follows:

6 1. On May 24, 2011, a putative class action was commenced and is currently pending
7 against Starbucks in the Superior Court of California, County of Santa Clara, as Case No.
8 111CV201544, entitled *Brittney Cooper, an individual, on behalf of herself and all persons similarly*
9 *situated, vs. Starbucks Corporation.* On June 2, 2011, Starbucks was served with the complaint. See
10 Declaration of Jeremy F. Bollinger in Support of Starbucks Corporation's Notice of Removal of Action
11 Pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453 ("Bollinger Decl.") ¶ 2. Attached as
12 Exhibit A to the Bollinger Declaration is a true copy of the Notice of Service of Process, Summons,
13 Civil Case Cover Sheet, Notice of Case Management Conference, Alternative Dispute Resolution
14 Package, and Complaint. See Bollinger Decl. ¶ 2. Attached as Exhibit B to the Bollinger Declaration
15 is a true conformed copy of Starbucks Answer to Plaintiff's Complaint, filed in Santa Clara County
16 Superior Court on June 29, 2011. See Bollinger Decl. ¶ 3. There have been no further proceedings in
17 case number 111CV201544 and no other pleadings have been filed and served upon Plaintiff or
18 Starbucks in this action. See Bollinger Decl. ¶ 4.

19 2. Plaintiff Brittney Cooper is a former Starbucks employee who asserts claims for failure
20 to pay minimum and overtime wages, failure to provide accurate itemized wage statements, and
21 violation of the California unfair competition laws. See Complaint, ¶¶ 23-54. Plaintiff purports to
22 bring these claims on behalf of a putative class that includes persons currently and formerly employed
23 by Starbucks in California as a non-exempt, hourly Barista during the period of May 24, 2007 to the
24 present. Complaint, ¶ 4.

25 3. The Complaint and Summons were served on June 2, 2011. Bollinger Decl. ¶ 2.
26 Starbucks Notice of Removal is timely because it is filed within thirty (30) days of that service. See 28
27 U.S.C. § 1446(b).

1 4. The above-described action is a civil action of which this Court has original jurisdiction
 2 and thus may be removed pursuant to 28 U.S.C. § 1441(b). Under 28 U.S.C. § 1441(a), a defendant
 3 may remove to federal district court “any civil action brought in a State court of which the district
 4 courts of the United States have original jurisdiction . . .”

5 5. **Diversity Jurisdiction.** This Court has diversity jurisdiction over Plaintiff’s claims.
 6 Pursuant to the Class Action Fairness Act (“CAFA”), federal district courts have original jurisdiction
 7 over a class action if (1) it involves 100 or more putative class members, (2) any class member is a
 8 citizen of a state different from any defendant, and (3) the aggregated amount in controversy exceeds
 9 \$5 million (exclusive of costs and interest). *See 28 U.S.C. §§ 1332(d)(2), d(5), and (d)(6).*

10 6. **Class Size.** If Plaintiff’s allegations are established, the class will exceed 100 members.
 11 *See Complaint, ¶ 15; see also Declaration of Jana Rutt in Support of Notice of Removal of Action*
 12 (“Rutt Decl.”) ¶ 8 (indicating that Starbucks employed more than 84,000 individuals as Baristas at its
 13 stores in California between May 2007 and June 2011).

14 7. **Diversity of Citizenship.** At all relevant times, there has been diversity of citizenship
 15 between the parties to the action. Starbucks is informed and believes that Plaintiff, at the time this
 16 action was commenced, was a citizen and resident of the State of California. *See Complaint, ¶ 9.*

17 8. Starbucks is not a citizen of the State of California. “[A] corporation shall be deemed to
 18 be a citizen of any State by which it has been incorporated and of the State where it has its principal
 19 place of business . . .” 28 U.S.C. § 1332(c)(1). Starbucks has not been incorporated in California.
 20 Rather, at the time this action was commenced, Starbucks was and is a corporation organized and
 21 incorporated under the laws of the State of Washington. *See Complaint ¶ 1; Rutt Decl. ¶ 2.*¹ Nor is
 22 California the state in which Starbucks has its principal place of business. Rather, as shown below,
 23 Starbucks principal place of business is located in the state of Washington.²

25
 26 ¹ A defendant may make the requisite showing by setting forth additional facts in declarations
 27 of knowledgeable company officials. *See United Computer Systems, Inc. v. AT&T Corp.*, 298 F.3d
 756, 763 (9th Cir. 2002).

28 ² “[28 U.S.C. § 1332(c)] makes clear that every corporation has one and only one principal
 29 place of business.” *J.A. Olson Co. v. City of Winona, Miss.*, 818 F.2d 401, 406 (5th Cir. 1987), *citing*
 S.Rep. No. 1830, 85th Cong., 2d Sess., *reprinted in* 1958 U.S.C.C.A.N. 3099, 3102 (corporation to be

1 9. The Supreme Court has explained that a court should apply what had been formerly
 2 referred to by Courts of Appeals as the “nerve center” test to identify the state in which the majority of
 3 the corporation’s executive and administrative functions are performed. *See Hertz Corp. v. Friend*, 130
 4 S.Ct. 1181, 1192 (2010) (resolving circuit split regarding methodology for determining a corporation’s
 5 principal place of business for citizenship and diversity jurisdiction purposes in favor of “nerve center”
 6 test).

7 10. Under the “nerve center” test, the principal place of business is the state where ‘a
 8 corporation’s officers direct, control, and coordinate the corporation’s activities.’ *Id.* The Supreme
 9 Court further explained in *Hertz* that a corporation’s nerve center “should normally be the place where
 10 the corporation maintains its headquarters” and that a corporation’s nerve center is a “single place.” *Id.*
 11 at 1192-93. Relevant factors include where executives reside and maintain offices, where
 12 administrative and financial offices are located, where the board of directors meet, where income tax
 13 returns are filed, and where day-to-day control over the company is executed. *See Unger v. Del E.
 14 Webb Corp.*, 233 F. Supp. 713, 716 (N.D. Cal. 1964), *accord State Farm Fire & Casualty Co. v. Byrd*,
 15 710 F. Supp. 1292, 1293 (N.D. Cal. 1989).

16 11. Starbucks maintains its corporate headquarters in Seattle, Washington. Rutt Decl. ¶ 2.
 17 Starbucks executive officers, including the chairman, president, chief financial officer, executive vice-
 18 presidents, and general counsel, maintain their offices at Starbucks headquarters in Seattle,
 19 Washington. Rutt Decl. ¶ 3. From its headquarters in Washington, the Company manages day-to-day
 20 operations, including determining and implementing company-wide policy regarding human resources,
 21 marketing, finance, accounting, income tax, product distribution, and legal issues. Rutt Decl. ¶ 4.
 22 Meetings of Starbucks Board of Directors and stockholders take place in the state of Washington. Rutt
 23 Decl. ¶ 5. In addition, Starbucks financial records are maintained in Washington, and the Company’s
 24 tax returns are filed from the executive offices in Washington. Rutt Decl. ¶¶ 6-7.

25 12. Accordingly, this action is between citizens of different states – Plaintiff, who is a
 26 citizen of California, and Starbucks, which is a citizen of Washington.

27
 28 regarded as “citizen of that *one* State in which was located its principal place of business”) (emphasis
 added).

1 13. Starbucks has no knowledge that any Doe Defendants have been served in this action,
 2 and the citizenship of such fictitious defendants is disregarded for purposes of removal. *See* 28 U.S.C.
 3 § 1441(a).

4 14. **Amount in Controversy.** Starbucks avers, for purposes of this Notice only, that if
 5 Plaintiff prevailed on the claims asserted in this action, the requested monetary recovery would exceed
 6 five million dollars.³

7 15. For her Second Cause of Action, Plaintiff alleges that Starbucks maintains a “uniform
 8 policy and practice” of failing to pay all wages for new-hire and ongoing training activities, which
 9 wages would still be due upon termination. *See Complaint ¶¶ 2, 35-50.* Under Labor Code Section
 10 203, former employees whom an employer willfully denied wages may recover penalties in the amount
 11 of their daily rate for a period of up to thirty days. *See Cal. Lab. Code § 203.* A three-year statute of
 12 limitations applies to claims brought pursuant to Section 203. *Pineda v. Bank of America, N.A.,* 50
 13 Cal. 4th 1389, 1395-96 (2010).

14 16. Thus, the class of individuals whom Plaintiff claims are entitled to penalties under
 15 Section 203 potentially includes all former Baristas employed by Starbucks in California since May 24,
 16 2008, under the three-year statute of limitations. *See Complaint ¶ 4.* Between May 2008 and June
 17 2011, Starbucks employed more than 61,000 individuals as Baristas at its stores in California. Rutt
 18 Decl. ¶ 8. Out of those individual Baristas, more than 38,000 no longer work for Starbucks. Rutt Decl.
 19 ¶ 8. These individuals earned at least \$8.00 per hour, the prevailing minimum wage rate in California
 20 during the relevant period.⁴ Rutt Decl. ¶ 9. *See Complaint ¶¶ 1, 6-7, 15.* Because these individuals
 21 typically worked more than three hours per day, their average daily rate of pay was more than \$24.00.
 22 Rutt Decl. ¶ 9. Accordingly, a 30-day penalty would total at least \$720 per person. Therefore, with
 23 respect to the 38,000 Baristas that comprise the alleged class of individuals allegedly entitled to

25
 26 ³ A defendant may make the requisite showing by setting forth additional facts in the notice of
 removal or by affidavit. *See Lamke v. Sunstate Equipment Co., LLC,* 319 F. Supp. 2d 1029, 1032
 (N.D. Cal. 2004).

27 ⁴ The California Department of Labor Standards Enforcement website indicates that the
 28 minimum wage in effect from May 24, 2008 to the present is \$8.00 per hour. *See*
<http://www.dir.ca.gov/Iwc/MinimumWageHistory.htm>.

1 Section 203 penalties, the amount in controversy for the Section 203 penalties alone exceeds the
2 jurisdictional threshold of \$5,000,000.00.

3 17. Thus, without even considering Plaintiff's underlying wage claims, the amount in
4 controversy clearly exceeds the jurisdictional threshold.

5 18. There are no grounds that would justify this Court in declining to exercise its
6 jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or requiring it to decline to exercise jurisdiction
7 pursuant to 28 U.S.C. § 1332(d)(4).

8 19. **Venue.** The United States District Court for the Northern District of California is the
9 judicial district embracing the place where Case No. 111CV201544 was filed by Plaintiff and is
10 therefore the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

11 WHEREFORE, Starbucks requests that the above action now pending against it in the
12 Superior Court of California, County of Santa Clara, be removed therefrom to this Court.
13

14 Dated: July 1, 2011

AKIN GUMP STRAUSS HAUER & FELD LLP
Catherine A. Conway
Gregory W. Knopp
Mark R. Curiel
Jeremy F. Bollinger

17 By _____
18

Mark R. Curiel
Attorneys for Defendant Starbucks Corporation

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los
5 Angeles, CA 90067. On July 1, 2011, I served the foregoing document(s) described as:
DEFENDANT STARBUCKS CORPORATION'S NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. §§ 1332(D)(2), 1441(A), 1446, 1453 on the interested party(ies) below, using the following means:

6 Norman B. Blumenthal
7 Kyle R. Nordrehaug
8 Aparajit Bhowmik
9 Blumenthal, Nordrehaug & Bhowmik
2255 Calle Clara
La Jolla, CA 92037

10 Fax : (858) 551-1223

11 BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the
12 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
13 collection and processing correspondence for mailing. On the same day that correspondence is placed
for collection and mailing, it is deposited in the ordinary course of business with the United States
14 Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

15 BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an
16 overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I
placed the envelope or package for collection and overnight delivery at an office or a regularly utilized
17 drop box of the overnight delivery carrier.

18 BY FAX Based on an agreement of the parties to accept service by fax transmission, I faxed the
documents to the respective fax number(s) of the party(ies) as stated above. No error was reported by
19 the fax machine that I used. A copy of the record of the fax transmission(s), which I printed out, is
attached.

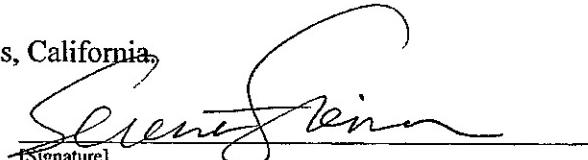
20 BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties
21 to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the
respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable
22 time after the transmission, any electronic message or other indication that the transmission was
unsuccessful.

23 (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct.

24 (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose
direction the service was made.

26 Executed on July 1, 2011 at Los Angeles, California,

27 Serena Steiner
[Print Name of Person Executing Proof]


[Signature]